

W. Scott Mitchell
Brienne C. McClafferty
Holland & Hart LLP
401 North 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639
Telephone: (406) 252-2166
Fax: (406) 252-1669
smitchell@hollandhart.com
bcmclafferty@hollandhart.com
*Attorneys for Defendants Philip Morris USA, Inc.,
Crazy Mountain Ranch, and Altria Group Distribution
Company*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

CRAIG ARNOLD, PAUL GRUDEK,)
HANK SCHMIDT, DAN WERTZ, KEITH)
WHITMAN, HOOVER & ASSOCIATES,)
LLC, TIGER EYE & ASSOCIATES, LLC,)
ELDER/ SCHMIDT-THE SECURITY)
CONSULTANT GROUP, LLC, WERTZ,)
LLC, AND K WHIT SERVICES, LTD,)

Plaintiffs,)

v.)

IRONGATE SERVICES, LLC, PHILIP)
MORRIS USA, INC., CRAZY)
MOUNTAIN RANCH, ALTRIA GROUP)
DISTRIBUTION COMPANY, KMG)
IRONGATE GROUP, L.P., and JOHN)
DOES A-Z,)

Defendants.)

Cause No. _____

NOTICE OF REMOVAL

Defendants Philip Morris USA, Inc., Crazy Mountain Ranch, and Altria Group Distribution Company (collectively, “Defendants”), hereby submit this Notice of Removal for the purpose of removing the above-captioned action from the Montana Sixth Judicial District Court, Park County, to the United States District Court for the District of Montana, Billings Division, pursuant to 28 U.S.C. §§ 1441, 1446, 1331, and 1367.

Removal is proper based on federal question jurisdiction because a federal question appears on the face of the initial Complaint filed by the plaintiffs. In support of its notice, Defendants state as follows:

1. On January 19, 2017, Plaintiffs Craig Arnold, Paul Grudek, Hank Schmidt, Dan Wertz, Keith Whitman, Hoover & Associates, LLC, Tiger Eye & Associates, LLC, Elder/Schmidt-The Security Consultant Group, LLC, Wertz, LLC, and K Whit Services, Ltd. (collectively, “Plaintiffs”) filed a Complaint and Jury Demand (“Complaint”) in the Sixth Judicial District Court, Park County, Montana, Cause No. DV-17-9. A true and correct copy of the Complaint is attached hereto as Exhibit A.

2. The Complaint purports to assert two counts, including (1) a wage claim under the Montana Minimum Wage and Wage Protection Act; and (2) a wage claim under the Federal Fair Labor Standards Act.

3. Defendants acknowledged service of the Complaint and Summons via their statutory agent on February 10, 2017.

4. Therefore, this Notice of Removal is filed within thirty days of service of the Complaint on Defendants as required by 28 U.S.C. § 1446(b).

5. Removal of this action is proper under 28 U.S.C. § 1441(a).

6. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States. Plaintiffs' Complaint sets out a wage claim under a federal law, the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 ("FLSA"). Therefore, federal question jurisdiction exists over Plaintiffs' claims under 28 U.S.C. § 1331 because the resolution of Plaintiffs' claim will require adjudication of disputed questions of federal law. Pursuant to 28 U.S.C. § 1441(a), then, Defendants may remove the case to the district court of the United States for the district and division embracing the place where the action brought in state court is pending.

7. Plaintiffs' Complaint also sets out a state wage claim under the Montana Minimum Wage and Wage Protection Act. This Court has supplemental jurisdiction over this claim pursuant to 28 U.S.C. § 1367(a) because it arises out of the same operative facts as Plaintiffs' claim under the FLSA and "form[s] part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

8. Because Plaintiffs' FLSA claim arises under the laws of the United States, removal of this entire cause of action is therefore appropriate under 28 U.S.C. § 1441(a).

9. This action is a civil action which may be removed by Defendants to the United States District Court for the District of Montana pursuant to 28 U.S.C. §§ 1331 and 1441 because it is a civil action brought in a state court of which such United States District Court has original jurisdiction.

10. Defendants have not yet filed an Answer, nor entered any other appearance in the state court proceeding. Plaintiffs' counsel has agreed to an extension of time for Defendants to answer or otherwise appear until April 3, 2017.

11. The undersigned has contacted counsel for the other defendants in this case, Irongate Services, LLC and KMG Irongate Group, L.P. (collectively, "Irongate"). Irongate's counsel indicated that Irongate consents to the removal of this case to Federal Court.

12. Promptly after filing this Notice of Removal, Defendants will file a copy of the Notice with the Clerk of the District Court of the Sixth Judicial District, Park County, Montana, and will provide written notice to counsel for Plaintiffs, all in accordance with 28 U.S.C. § 1446(d) and Local Rule 3.3(a).

WHEREFORE, Defendants Philip Morris USA, Inc., Crazy Mountain Ranch, and Altria Group Distribution Company, give notice pursuant to 28 U.S.C.

§ 1446 of the removal of this action from the Montana Sixth Judicial District Court, Park County, Montana, to this Court.

Respectfully submitted this 10th day of March, 2017.

/s/ W. Scott Mitchell

Holland & Hart LLP

Attorneys for Defendants Philip Morris
USA, Inc., Crazy Mountain Ranch, and
Altria Group Distribution Company

CERTIFICATE OF SERVICE
L.R. 5.2(B)

I hereby certify that, on the 10th day of March, 2017, a copy of the foregoing document was served on the following persons by the following means:

1, 2 CM/ECF

☐ Hand Delivery

☐ Mail

☐ Overnight Delivery Service

☐ Fax

☐ E-Mail

1. Clerk, U.S. District Court

2. Michael D. McLean
Patrick T. Gallagher
Denny K. Palmer
Wall, McLean & Gallagher, PLLC
P.O. Box 1713
Helena, MT 59624

/s/ W. Scott Mitchell

Holland & Hart LLP